

**INTEROFFICE COMMUNICATION
COUNTY OF MILWAUKEE**

DATE: March 14, 2014

TO: Marina Dimitrijevic, Chairwoman, Milwaukee County Board of Supervisors

FROM: Mark A. Grady, Deputy Corporation Counsel *MAG*

SUBJECT: Pension Board Request for amendments to ERS Pension Ordinances; sections 201.24(2.7), (2.10), (4.6), (4.7), (4.8), (12.1), (12.2), (12.3), (12.4), (12.6), (12.8), (13.3) and (13.4)

Please refer the attached resolution and ordinance amendments requested by the Pension Board of the Employees' Retirement System of the County of Milwaukee ("ERS") to the Committee on Finance, Personnel and Audit and to the Pension Study Commission. At its meeting on January 15, 2014, the Pension Board approved a motion requesting that the County Board adopt these amendments (copy attached). The ordinance amendments were drafted by Reinhart Boerner Van Deuren, the Pension Board's outside tax counsel, and reviewed by Corporation Counsel.

Background

ERS is a qualified plan under the Internal Revenue Code ("IRS Code") and must comply with IRS Code requirements applicable to government plans. Periodically, ERS is required to seek a determination letter from the Internal Revenue Service ("IRS") confirming ERS's compliance with IRS Code requirements. ERS has a pending determination letter request that was filed with the IRS on December 12, 2008 with which some of these amendments were filed as proposed amendments. If the IRS issues a determination letter on ERS's prior filing, these amendments must be adopted in order for that determination letter to be valid.

ERS also has an outstanding filing under the IRS's Voluntary Correction Program ("VCP"). These amendments will be required prior to full completion of and correction under the VCP.

The proposed amendments are required in order to maintain compliance with federal legislative changes and accompanying regulations under the Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA"), Heroes Earnings Assistance and Relief Tax Act of 2008 ("HEART") and the Pension Protection Act of 2006 ("PPA"). Attached is a summary of each of the amendments required by these legislative changes.

ERS's actuary, Buck Consultants, has performed a cost analysis of these amendments. Because ERS has operationally complied with the IRS Code as it has changed and as it is set forth in these amendments, these amendments result in no additional costs to ERS. In addition, no

administrative costs should be incurred following adoption of these amendments because ERS already operates in compliance with the amendments.

Proposed Amendments

To comply with IRS Code requirements, the Pension Board of the Employees' Retirement System of the County of Milwaukee requests adoption of the following amendments to sections 201.24(2.7), (2.10), (4.6), (4.7), (4.8), (12.1), (12.2), (12.3), (12.4), (12.6), (12.8), (13.3) and (13.4). A brief summary follows and a more detailed summary is attached.

- IRS Code section 401(a)(17). The change to Ordinance section 201.24(2.7) amends the definition of "earnable compensation" in the Ordinances to comply with IRS Code section 401(a)(17) and ensure the proper elements are included in calculating a member's retirement benefit.
- IRS Code section 414(u). The amendment to Ordinance section 201.24(2.10) is required to comply with IRS Code section 414(u) requirements regarding treatment of military service by retirement plans for individuals who leave active employment for military service.
- IRS Code section 401(a)(9). The amendments to Ordinance sections 201.24(4.6), (4.7) and (4.8) are required to comply with IRS Code section 401(a)(9) requirements used in calculating required minimum distributions at age 70-1/2 and upon certain other events.
- IRS Code section 415. The amendments to Ordinance sections 201.24(12.1), (12.2), (12.3), (12.4), (12.6) and (12.8) are required to comply with IRS Code section 415, which limits the amount of the benefit that an individual can receive from a retirement plan. The amendments incorporate technical IRS Code requirements for determining whether a benefit exceeds the applicable limits.
- IRS Code section 401. The amendments to Ordinance sections 201.24(13.3) and (13.4) are required to comply with IRS Code section 401 requirements and expand the types of plans that may receive distributions from ERS and receive favorable tax treatment. This change also permits non-spouse beneficiaries to roll over benefit payments, which is now required under IRS Code section 401.

cc: County Executive Chris Abele
Comptroller Scott Manske
Janelle Jensen

1 By Supervisor

Res. File 14-
Journal,

2
3
4 **A RESOLUTION**

5
6 To amend sections 201.24(2.7), (2.10), (4.6), (4.7), (4.8), (12.1), (12.2), (12.3),
7 (12.4), (12.6), (12.8), (13.3) and (13.4) of the Milwaukee County Code of General
8 Ordinances.

9
10 Whereas, the Employees' Retirement System of the County of Milwaukee
11 ("ERS") is a tax-qualified governmental retirement plan that must comply with the
12 applicable provisions of the Internal Revenue Code of 1986, as amended (the "IRS
13 Code"); and

14
15 Whereas, the Pension Board of the Employees' Retirement System of the County
16 of Milwaukee (the "Pension Board") acts as the fiduciary for and oversees
17 administration of ERS, and as such, the Pension Board seeks to ensure that ERS
18 maintains its tax-qualified status; and

19
20 Whereas, the United States Congress and the Internal Revenue Service ("IRS")
21 adopted various pieces of legislation and regulations, respectively, impacting tax-
22 qualified retirement plans, including the Economic Growth and Tax Relief Reconciliation
23 Act of 2001, the Pension Protection Act of 2005 and the Heroes Earnings Assistance
24 and Relief Tax Act of 2008; and

25
26 Whereas, the Pension Board requested that ERS be amended to comply with
27 required legislative and regulatory changes; and

28
29 Whereas, the proposed amendments have been referred to the pension fund
30 actuary, whose analysis indicates their cost will be immaterial; and

31
32 Whereas, the Pension Study Commission reviewed the actuary's report on
33 [_____] and has recommended the Milwaukee County Board of Supervisors
34 ("County Board") adopt the proposed amendments; and

35
36 NOW THEREFORE, BE IT RESOLVED, as requested by the Pension Board,
37 that ERS is hereby amended to comply with the laws governing tax-qualified retirement
38 plans required by legislative and regulatory changes.

39
40 BE IT FURTHER RESOLVED, that to ensure the above-noted revisions are
41 properly codified, the County Board does hereby adopt the following:

42
43 **AN ORDINANCE**

44
45 To amend Chapter 201.24 of the Milwaukee County Code of General Ordinances
46 General Ordinances of Milwaukee County as appropriate to comply with federal

1 legislative and regulatory changes related to tax-qualified retirement plans that impact
2 the Employees Retirement System of the County of Milwaukee.

3
4 The County Board of Supervisors of the County of Milwaukee does ordain as
5 follows:

6
7 **Section 1.** Effective January 1, 2002, section 201.24(2.7) is amended to read as
8 follows:

9
10 Earnable compensation shall mean total compensation that would be payable to
11 a member if he worked the full normal working time for his position, plus all
12 payments for authorized overtime but excluding payments in lieu of vacations,
13 provided that where service is credited during periods of absences as provided in
14 section 2.9 hereof, the employee shall be considered to have earnable
15 compensation during such periods of absence equivalent to his earnable
16 compensation as of the last month of employment prior to the beginning of such
17 absences. In cases where compensation includes maintenance, the board shall
18 fix the value of that portion of the compensation not payable in money. Where
19 the county pays less than the full rate of compensation for a position and the
20 balance is payable by some other government, company or individual, the
21 amount paid by the county shall be considered the earnable compensation for
22 such period of service. The annual earnable compensation of each member
23 taken into account for determining all benefits provided under the system for any
24 year shall not exceed the annual compensation limit pursuant to Internal
25 Revenue Code section 401(a)(17); provided, however, that this limitation shall
26 apply only with respect to members who first commence participation in the
27 system after 1995. The annual compensation limit shall be adjusted annually for
28 increases in the cost of living by the Secretary of the Treasury or his delegate,
29 except that the dollar increase in effect on January 1 of any calendar year is
30 effective for years beginning in such calendar year. The "annual compensation
31 limit" is two one-hundred fifty-thousand dollars (\$20150,000.00), as indexed.

32
33 **Section 2.** Effective January 1, 2007 or as noted below, the following shall be added to
34 the end of section 201.24(2.10):

35
36 To the extent required by the Heroes Earnings Assistance and Relief Tax Act of
37 2008 (HEART Act) and as applicable for the system, the following provisions
38 apply:

- 39
40 (a) Effective January 1, 2007, if a member dies while performing qualified
41 military service, the survivors of the member shall be entitled to any
42 additional benefits (other than contributions relating to the period of
43 qualified military service) provided under the system as if the member
44 had been reemployed on the day prior to death and then severed
45 employment on the actual date of death.

(b) Effective for payments made on or after January 1, 2009, compensation for purposes of section 2.4 includes any differential wage payments (as defined in Internal Revenue Code section 3401(h)(2)) to an individual who does not currently perform services for the county by reason of qualified military service while on active duty for a period of more than thirty (30) days and represents all or a portion of the wages the individual would have received from the county if the individual was performing services for the county. Such differential wage payment shall be treated as a payment of wages by the county to the member.

Qualified military service for the purposes of the above provisions is determined pursuant to Internal Revenue Code section 414(u)(5).

Section 3. Effective January 1, 2003, section 201.24(4.6) is amended to read as follows:

(1) In order to receive a pension, a member shall file with the board a written application therefor on a form prescribed by the board.

(2) A member who files with the board a completed application for benefits from the system shall be entitled to have his benefits commence no later than the 60th day after the close of the year in which the later of the following occurs:

(a) The member attains his normal retirement age; or

(b) The member terminates employment.

Notwithstanding the preceding, regardless of whether a member files an application for benefits, in all events, payments shall commence no later than the member's required beginning date, which is the April 1 following the calendar year in which the member attains age seventy and one-half (70 1/2) or, if later, the calendar year in which the member retires. All distributions made under sections (4.6) and (4.7) shall be determined and made in accordance with Internal Revenue Code section 401(a)(9) and corresponding Treasury regulations. Notwithstanding the other provisions of this section 4.6 and section 4.7, distributions may be made under a designation made before January 1, 1984, in accordance with section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act (TEFRA) and the provisions of Ordinance section 201.24(4.8) that relate to section 242(b)(2) of TEFRA. For a retired member who attained age seventy and one-half (70 1/2) after December 31, 1987 and before January 1, 1989, payments shall commence not later than April 1, 1990.

(3) Benefits may not be distributed to any member under a method of payment which, as of the member's required beginning date, does not satisfy the minimum distribution requirements of Internal Revenue Code section 401(a)(9) and applicable Treasury regulations, including the minimum distribution incidental benefit requirements of ~~proposed Treasury regulation Section 1.401(a)(9)-2,~~

1 which the system hereby incorporates by reference. Life expectancy is
2 computed by use of the Single Life Table in section 1.401(a)(9)-9 of the
3 Treasury regulations. Section II(6) permits a member to receive a pension in the
4 form of an annuity (i.e., periodic payments payable at regular intervals). If a
5 member receives his pension benefit in the form of an annuity, payments under
6 the annuity shall satisfy the following requirements:

7 (a) The amount that must be distributed on or before the member's
8 required beginning date (or, if the member dies before distributions begin,
9 the date distributions are required to begin under sections 4.7(2)(a) or (b)
10 below) is the payment that is required for one payment interval. The
11 second payment need not be made until the end of the next payment
12 interval even if that payment interval ends in the next calendar year.
13 Payment intervals are the periods for which payments are received, e.g.,
14 bi-monthly, monthly, semi-annually, or annually. All of the member's
15 benefit accruals as of the last day of the first distribution calendar year will
16 be included in the calculation of the amount of the annuity payments for
17 payment intervals ending on or after the member's required beginning
18 date. ~~The amount to be distributed each year must be at least an amount~~
19 ~~equal to the quotient obtained by dividing the member's entire interest by~~
20 ~~the life expectancy of the member or the joint and last survivor expectancy~~
21 ~~of the member and designated beneficiary~~

22 (b) Life expectancy (a joint life and last survivor expectancy), for purposes
23 for determining the period certain, shall be determined without
24 recalculation of life expectancy;

25 (c) Life expectancy of a member and the joint life expectancy of a member
26 and his beneficiary for all other purposes shall be determined in
27 accordance with applicable law and regulations, provided that the member
28 or his spouse may elect to recalculate life expectancy for one (1) or both
29 lives no more frequently than annually, provided such election is made
30 prior to the member's required distribution date;

31 (d) Once payments have begun over a period certain, the period certain
32 may not be lengthened even if the period certain is shorter than the
33 maximum permitted;

34 (e) Annuity distributions must be paid in periodic payments made at
35 intervals not longer than one (1) year;

36 (f) Life (or joint and survivor) annuity payments will satisfy the minimum
37 distribution incidental benefit requirements of A-2 of Treasury regulation
38 section 1.401(a)(9)-6; and

39 (g) Payments will either be nonincreasing or increase only as follows (and
40 only if so allowed by and provided for in other Ordinance provisions):

41 (i) By an annual percentage increase that does not exceed the
42 annual percentage increase in an eligible cost-of-living index (as

1 defined under A-14 of Treasury regulation section 1.401(a)(9)-6) for
2 a twelve- (12-) month period ending in the year during which the
3 increase occurs or a prior year;

4 (ii) By a percentage increase that occurs at specified times and
5 does not exceed the cumulative total of annual percentage
6 increases in an eligible cost-of-living index (as defined under A-14
7 of Treasury regulation section 1.401(a)(9)-6) since the annuity
8 starting date, or if later, the date of the most recent percentage
9 increase, provided (in the case of a cumulative increase), an
10 actuarial increase may not be provided to reflect that increases
11 were not provided in the interim years;

12 (iii) To the extent of the reduction in the amount of the member's
13 payments to provide for a survivor benefit upon death, but only if
14 there is no longer a survivor benefit because the beneficiary whose
15 life was being used to determine the distribution period described in
16 section 4.7(2) dies or is no longer the member's beneficiary
17 pursuant to a domestic relations order within the meaning of
18 Rule 1017;

19 (iv) To allow a beneficiary to convert the survivor portion of a joint
20 and survivor annuity into a single sum distribution upon the
21 member's death;

22 (v) To pay increased benefits that result from an Ordinance
23 amendment; or

24 (vi) To the extent increases are otherwise permitted under A-14 of
25 Treasury regulation section 1.401(a)(9)-6.

26 (h) Any additional benefits accruing to the member in a calendar year after
27 the first distribution calendar year will be distributed beginning with the first
28 payment interval ending in the calendar year immediately following the
29 calendar year in which such amount accrues.

30 (4) Requirements for annuity distributions that commence during a member's
31 lifetime.

32 (a) Joint Life Annuities Where the Beneficiary Is Not the Member's
33 Spouse. If the member's interest is being distributed in the form of a joint
34 and survivor annuity for the joint lives of the member and a nonspouse
35 beneficiary, annuity payments to be made on or after the member's
36 required beginning date to the designated beneficiary after the member's
37 death must not at any time exceed the applicable percentage of the
38 annuity payment for such period that would have been payable to the
39 member as determined for individuals less than age seventy and one-half
40 (70 1/2) at the member's annuity starting date using the table set forth in

A-2 of section 1.401(a)(9)-6 of the Treasury regulations. If the form of distribution combines a joint and survivor annuity for the joint lives of the member and a nonspouse beneficiary and a period certain annuity, the requirement in the preceding sentence will apply to annuity payments to be made to the designated beneficiary after the expiration of the period certain.

(b) Period Certain Annuities. Unless the member's spouse is the sole designated beneficiary and the form of distribution is a period certain and no life annuity, the period certain for an annuity distribution commencing during the member's lifetime may not exceed the applicable distribution period for the member under the Uniform Lifetime Table set forth in section 1.401(a)(9)-9 of the Treasury regulations for the calendar year that contains the annuity starting date.

If the member's spouse is the member's sole designated beneficiary and the form of distribution is a period certain and no life annuity, the period certain may not exceed the longer of the member's applicable distribution period, as determined under this section, or the joint life and last survivor expectancy of the member and the member's spouse as determined under the Joint and Last Survivor Table set forth in section 1.401(a)(9)-9 of the Treasury regulations.

Section 4. Effective January 1, 2003, section 201.24(4.7) is amended to read as follows:

(1) If the member dies after his required beginning date, as determined under section 4.6(2), or, if earlier, the date he commences an irrevocable annuity, any remaining benefit must continue to be distributed at least as rapidly as under the method of distribution in effect prior to the member's death.

(2) If the member dies before his distributions begin and before his required beginning date, as determined under subsection 4.6(2), distribution of the member's entire benefit shall be completed by December 31 of the calendar year containing the 5th anniversary of the member's death, unless an election is made to receive distributions in accordance with subsections (a) or (b) below.

(a) If any portion of the member's benefit is payable to a designated beneficiary, distributions shall commence ~~may be made either (i) over the life of the designated beneficiary or (ii) over a period certain not greater than the life expectancy of the designated beneficiary commencing on or before December 31 of the calendar year immediately following the calendar year in which the member died.~~

(b) If the designated beneficiary is the member's spouse, the date distributions are required to begin in accordance with section (a) above shall not be earlier than the later of (i) December 31 of the calendar year immediately following the calendar year in which the member died, or (ii)

December 31 of the calendar year in which the member would have attained age seventy and one-half (70 1/2).

If the member has not made an election pursuant to this section by the time of his death, the member's designated beneficiary must elect the method of distribution no later than the earlier of (a) December 31 of the calendar year in which distributions would be required to begin under this section, or (b) December 31 of the calendar year which contains the 5th anniversary of the date of death of the member. If the member has no designated beneficiary, or if the beneficiary fails to elect a method of distribution, distribution of the member's entire interest must be completed by December 31 of the calendar year containing the 5th anniversary of the member's death.

If the surviving spouse dies after the member, but before payments commence, the above provisions, with the exception of subsection (b) above, shall be applied as if the surviving spouse were the member.

(3) Requirements for Minimum Distributions Where Member Dies Before Date Distributions Begin.

(a) Member Survived by Designated Beneficiary. If the member dies before the date distribution of his interest begins and there is a designated beneficiary, the member's entire interest will be distributed, beginning no later than the time described in sections 4.7(2)(a) or (b), over the life of the designated beneficiary or over a period certain not exceeding:

(i) The applicable distribution period determined under A-5 of Treasury regulations section 1.401(a)(9)-5, unless the annuity starting date is before the first distribution calendar year. For purposes of sections 4.6 and 4.7, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the member's required beginning date. For distributions beginning after the member's death, the first distribution calendar year is the calendar year in which distributions are required to begin under section 4.7(2)(a) or (b).

(ii) The life expectancy of the designated beneficiary is determined using the beneficiary's age as of the beneficiary's birthday in the calendar year that contains the annuity starting date, if the annuity starting date is before the first distribution calendar year.

(b) No Designated Beneficiary. If the member dies before the date distributions begin and there is no designated beneficiary as of September 30 of the year following the year of the member's death, distribution of the member's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the member's death.

(c) Death of Surviving Spouse Before Distributions to Surviving Spouse Begin. If the member dies before the date distribution of his interest begins,

1 the member's surviving spouse is the member's sole designated beneficiary,
2 and the surviving spouse dies before distributions to the surviving spouse
3 begin, this section will apply as if the surviving spouse were the member,
4 except that the time by which distributions must begin will be determined
5 without regard to section 4.7(2)(a) above.

6 (34) The board shall, upon the member's written request, or in the case of a
7 distribution described in subsection (2)(b) above, upon written request of the
8 member's surviving spouse, may recalculate his and/or his spouse's life
9 expectancy for purposes of calculating the minimum distribution. The member
10 must make such an election not later than his required beginning date as defined
11 in section 4.6(2). A member's surviving spouse must make such an election no
12 later than the December 31 date described in subsection (2)(b) above. This
13 election is irrevocable. A recalculation election applicable to a joint life
14 expectancy payment where the survivor is a nonspouse may not take into
15 account any adjustment to any life expectancy other than the member's life
16 expectancy. In the absence of a recalculation election, the system does not
17 permit recalculation of applicable life expectancy.

18
19 **Section 5.** Effective January 1, 2003, section 201.24(4.8)(4) is hereby amended to
20 read as follows:

21 (4) If a designation is revoked, any subsequent distribution must satisfy the
22 requirements of Internal Revenue Code section 401(a)(9) and the proposed
23 regulations thereunder. If a designation is revoked subsequent to the date
24 distributions are required to begin, the trust must distribute, by the end of the
25 calendar year following the calendar year in which the revocation occurs, the
26 total amount not yet distributed which would have been required to have been
27 distributed to satisfy Internal Revenue Code section 401(a)(9) and the proposed
28 regulations thereunder, including the minimum incidental benefit requirements of
29 ~~proposed regulation Section 401(a)(9)-2.~~ Any changes in the designation will be
30 considered to be a revocation of the designation. However, the mere substitution
31 or addition of another beneficiary (one not named in the designation) under the
32 designation will not be considered to be a revocation of the designation, so long
33 as such substitution or addition does not alter the period over which distributions
34 are to be made under the designation, directly or indirectly (for example, by
35 altering the relevant measuring life).

36
37 **Section 6.** Effective January 1, 2008, section 201.24(12.1)(3) is hereby restated to
38 read as follows:

39
40 ~~(3) If a member has never participated in an includable arrangement which~~
41 ~~provides an annual addition as defined in section 12.2 (other than one (1) or~~
42 ~~more qualified defined benefit plans), the limitation in subsection 12.2(a) above is~~
43 ~~deemed satisfied if the annual benefit payable to the member is not more than~~

one thousand dollars (\$1,000.00), multiplied by the member's number of years of service or parts thereof (not to exceed ten(10)).

(3) Notwithstanding anything else in this section to the contrary, the benefit otherwise payable to a member under this system shall be deemed not to exceed the maximum permissible benefit if:

(a) the retirement benefits payable for a limitation year under any form of benefit with respect to such member under this system and under all other defined benefit plans (without regard to whether a plan has been terminated) ever maintained by the county do not exceed \$10,000 multiplied by a fraction – (i) the numerator of which is the member's number of years (or part thereof, but not less than one year) of service (not to exceed 10) with the county, and (ii) the denominator of which is 10; and

(b) the county (or a predecessor employer) has not at any time maintained a qualified defined contribution plan in which the member participated (for this purpose, mandatory employee contributions under a defined benefit plan, individual medical accounts under Internal Revenue Code section 401(h), and accounts for postretirement medical benefits established under Internal Revenue Code section 419A(d)(1) are not considered a separate defined contribution plan).

Section 7. Effective January 1, 2008, section 201.24(12.2)(1) is hereby amended to read as follows:

(1) "Annual benefits" means the retirement benefit under the system which is payable annually in the form of a straight life annuity. Except as provided in this section, a benefit payable in a form other than a straight life annuity must be adjusted to an actuarially equivalent straight life annuity that begins at the same time as such other forms of benefit and is payable on the first day of each month, before applying the limitations of this section XII. The annual benefit does not include any benefits attributable to ~~employee contributions or rollover contributions or the assets transferred or rolled over from a qualified plan that was not maintained by the county.~~ For members who make contributions to their membership accounts, to the extent the County does not pick up these contributions and to the extent that such contributions are not measured by Internal Revenue Code section 415(n), the annual benefit attributable to such contributions shall be determined according to Internal Revenue Code section 411(c)(3) and the Treasury regulations thereunder. No actuarial adjustment to the benefit is required for the following benefits:

(a) The value of survivor benefits payable to a surviving spouse under a qualified joint and survivor annuity to the extent such benefits would not be payable if the member's benefit were not paid in a qualified joint and survivor annuity;

~~(b)~~ The value of benefits that are not directly related to retirement benefits; and

~~(c)~~ For members who at retirement do not have the value of the cost of living adjustment described in section 5.7 included in their Internal Revenue Code section 415 compliance calculation, the value of an automatic benefit increase feature, provided the form of benefit is not subject to Internal Revenue Code section 417(e)(3), would otherwise satisfy the limitations of this section XII, and the amount payable under the form of benefit in any limitation year shall not exceed the limits of this section XII and Internal Revenue Code section 415(b) applicable at the annuity starting date. For this purpose, an automatic benefit increase feature is included in a form of benefit if the form of benefit provides for automatic, periodic increases to the benefits paid in that form ~~post-retirement cost-of-living increases made in accordance with Internal Revenue Code section 415(d) and applicable Treasury Regulations.~~

The determination of the annual benefit shall take into account Social Security supplements described in Internal Revenue Code section 411(a)(9).

The determination of actuarial equivalence of forms of benefit other than a straight life annuity shall be made in accordance with the following section 12.2(1)(a) or (b).

(a) Benefit Forms Not Subject to Internal Revenue Code Section 417(e)(3): The straight life annuity that is actuarially equivalent to the member's form of benefit shall be determined under this section 12.2(1) if the form of the member's benefit is either (1) a nondecreasing annuity (other than a straight life annuity) payable for a period of not less than the life of the member (or, in the case of a qualified pre-retirement survivor annuity, the life of the surviving spouse), or (2) an annuity that decreases during the life of the member merely because of (a) the death of the survivor annuitant (but only if the reduction is not below fifty (50) percent of the benefit payable before the death of the survivor annuitant), or (b) the cessation or reduction of Social Security supplements or qualified disability payments (as defined in Internal Revenue Code section 401(a)(11)).

(i) Limitation Years Beginning Before July 1, 2007. For limitation years beginning before July 1, 2007, the actuarially equivalent straight life annuity is equal to the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit computed using whichever of the following produces the greater annual amount: (I) the interest rate specified in Rule 1014(c)(2) and the mortality table specified in Rule 1014(c)(1) for adjusting benefits in the same form; and (II) a five (5) percent interest rate

1 assumption and the applicable mortality table defined in Internal
2 Revenue Code section 417(e) for that annuity starting date.

3 (ii) Limitation Years Beginning on or After July 1, 2007. For
4 limitation years beginning on or after July 1, 2007, the actuarially
5 equivalent straight life annuity is equal to the greater of (1) the
6 annual amount of the straight life annuity (if any) payable to the
7 member under the system commencing at the same annuity
8 starting date as the member's form of benefit; and (2) the annual
9 amount of the straight life annuity commencing at the same annuity
10 starting date that has the same actuarial present value as the
11 member's form of benefit, computed using a five (5) percent interest
12 rate assumption and the applicable mortality table defined in
13 Internal Revenue Code section 417(e) for that annuity starting date.

14 (b) Benefit Forms Subject to Internal Revenue Code Section 417(e)(3):
15 The straight life annuity that is actuarially equivalent to the member's form
16 of benefit shall be determined under this paragraph if the form of the
17 member's benefit is other than a benefit form described in
18 section 12.2(1)(a). In this case, the actuarially equivalent straight life
19 annuity shall be determined as follows:

20 (i) Annuity Starting Date in Limitation Years Beginning After 2005.
21 The actuarially equivalent straight life annuity is equal to the
22 greatest of (I) the annual amount of the straight life annuity
23 commencing at the same annuity starting date that has the same
24 actuarial present value as the member's form of benefit, computed
25 using the interest rate specified in Rule 1014(c)(2) and the mortality
26 table specified in Rule 1014(c)(1) for adjusting benefits in the same
27 form; (II) the annual amount of the straight life annuity commencing
28 at the same annuity starting date that has the same actuarial
29 present value as the member's form of benefit, computed using a
30 five and one-half (5.5) percent interest rate assumption and the
31 applicable mortality table defined in Internal Revenue Code
32 section 417(e); and (III) the annual amount of the straight life
33 annuity commencing at the same annuity starting date that has the
34 same actuarial present value as the member's form of benefit,
35 computed using the applicable interest rate defined in Internal
36 Revenue Code section 417(e) and the applicable mortality table
37 defined in Internal Revenue Code section 417(e), divided by one
38 and five one-hundredths (1.05).

39
40 (ii) Annuity Starting Date in Limitation Years Beginning in 2004 or
41 2005. If the annuity starting date of the member's form of benefit is
42 in a limitation year beginning in 2004 or 2005, and if the IRS so
43 requires, the actuarially equivalent straight life annuity is equal to
44 the annual amount of the straight life annuity commencing at the

1 same annuity starting date that has the same actuarial present
2 value as the member's form of benefit, computed using whichever
3 of the following produces the greater annual amount: (I) the
4 interest rate specified in Rule 1014(c)(2) and the mortality table (or
5 other tabular factor) specified in Rule 1014(c)(1) for adjusting
6 benefits in the same form; and (II) a five and one-half (5.5) percent
7 interest rate assumption and the applicable mortality table defined
8 in Rule 1014(b)(1).

9 If the member's chosen form of benefit is subject to Internal
10 Revenue Code section 417(e)(3) and the annuity starting date of
11 the member's benefit is on or after the first day of the first limitation
12 year beginning in 2004 and before December 31, 2004, the
13 application of this section 12.2(1)(b)(ii) shall not cause the amount
14 payable under the member's form of benefit to be less than the
15 benefit calculated under the system, taking into account the
16 limitations of this section XII, except that the actuarially equivalent
17 straight life annuity is equal to the annual amount of the straight life
18 annuity commencing at the same annuity starting date that has the
19 same actuarial present value as the member's form of benefit,
20 computed using whichever of the following produces the greatest
21 annual amount:

22 (I) the interest rate specified in Rule 1014(c)(2) and the
23 mortality table (or other tabular factor) specified in Rule
24 1014(c)(1) for adjusting benefits in the same form;

25 (II) the applicable interest rate defined in Internal Revenue
26 Code section 417 and the applicable mortality table defined
27 in Internal Revenue Code section 417: and

28 (III) the applicable interest rate defined in Internal Revenue
29 Code section 417 (as in effect on the last day of the last
30 limitation year beginning before January 1, 2004, under
31 provisions of the system then adopted and in effect) and the
32 applicable mortality table defined in Internal Revenue Code
33 section 417.

34 **Section 8.** Effective January 1, 2002, section 201.24(12.3)(2) is amended to read as
35 follows:
36

37 (2) If the annual benefit of the member commences on or after age sixty-two
38 (62), the general limitations of subsection (1) above shall apply. The defined
39 benefit dollar limitation shall be adjusted if the annuity starting date of the
40 member's benefit is before age 62.

1 (a) Adjustment of Defined Benefit Dollar Limitation for Benefit
2 Commencement Before Age 62.

3 (i) Limitation Years Beginning Before July 1, 2007. If the
4 annuity starting date for the member's benefit is prior to age 62 and
5 occurs in a limitation year beginning before July 1, 2007, the
6 defined benefit dollar limitation for the member's annuity starting
7 date is the annual amount of a benefit payable in the form of a
8 straight life annuity commencing at the member's annuity starting
9 date that is the actuarial equivalent of the defined benefit dollar
10 limitation (adjusted under section 12.3(1) for years of participation
11 less than ten (10), if required) with actuarial equivalence computed
12 using a five (5) percent interest rate assumption and the 1994 GAR
13 mortality table.

14 (ii) Limitation Years Beginning on or After July 1, 2007. If the
15 annuity starting date for the member's benefit is prior to age 62 and
16 occurs in a limitation year beginning on or after July 1, 2007, the
17 defined benefit dollar limitation for the member's annuity starting
18 date is the lesser of: [a] the annual amount of a benefit payable in
19 the form of a straight life annuity commencing at the member's
20 annuity starting date that is the actuarial equivalent of the defined
21 benefit dollar limitation (adjusted under section 12.3(1) for years of
22 participation less than ten (10), if required) with actuarial
23 equivalence computed using a five (5) percent interest rate and the
24 applicable Internal Revenue Code section 417(e) mortality table
25 effective for that annuity starting date and [b] the defined benefit
26 dollar limitation (adjusted under section 12.3(1) for years of
27 participation less than ten (10), if required) multiplied by the ratio of
28 the annual amount of the immediately commencing straight life
29 annuity under the system at the member's annuity starting date to
30 the annual amount of the immediately commencing straight life
31 annuity under the system at age sixty-two (62), both determined
32 without applying the limitations of this section XII (and expressing
33 the participant's age based on completed calendar months as of the
34 annuity starting date).

35 (b) Notwithstanding the other requirements of this section 12.3, no
36 adjustment shall be made to the defined benefit dollar limitation to reflect
37 the probability of a member's death between the annuity starting date and
38 age sixty-two (62) if benefits are not forfeited upon the death of the
39 member prior to the annuity starting date. To the extent benefits are
40 forfeited upon death before the annuity starting date, such an adjustment
41 shall be made.

42 (c) Notwithstanding the other requirements of this section 12.3, no
43 adjustment shall be made to the defined benefit dollar limitation for

commencement of a benefit before age sixty-two (62) for a distribution on account of a member's becoming disabled by reason of a personal injury or sickness, or as a result of the death of a member.

Section 9. Effective January 1, 2002, section 201.24(12.3)(3) is amended to read as follows:

- (3) ~~Except as provided in this paragraph, if the annual benefit of the member commences prior to age sixty two (62), the defined benefit dollar limitation shall be the actuarial equivalent of an annual benefit beginning at age sixty-two (62). To determine actuarial equivalence, the interest rate assumption is the greater of the rates specified in paragraph (13) of section II or five (5) percent. In the event the annual benefit of the member commences between age fifty-five (55) and sixty-two (62), the actuarial reduction of the defined benefit dollar limitation shall not result in a dollar limitation which is less than seventy-five thousand dollars (\$75,000.00). In the event the annual benefit of the member commences prior to age fifty-five (55), the defined benefit dollar limitation shall be the greater of (a) the amount which is the actuarial equivalent of a seventy-five thousand dollar (\$75,000.00) annual benefit commencing at age fifty-five (55); or (b) the actuarial equivalent of the defined benefit dollar limitation beginning at age sixty-two (62), both calculated using the interest rate specified in the second sentence of this section 12.3(3). Notwithstanding the provisions of this section 12.3(2), the defined benefit dollar limitation of a "qualified member" shall not be actuarially adjusted. For purposes of this section, a "qualified member" is a member whose years of service taken into account in determining his benefit include at least fifteen (15) years of service as a full-time employee of any department of the county which provides police protection, firefighting services, or emergency medical services for any area within the jurisdiction of the county or is a member of the armed forces of the United States.~~

Section 10. Effective January 1, 2002, section 201.24(12.4)(1) is amended to read as follows:

- (1) The annual addition to a member's savings account and membership account for any limitation year shall not exceed the lesser of:
- (a) ~~the greater of thirty thousand dollars (\$30,000.00) or twenty-five (25) percent of the defined benefit dollar limitation recited in Internal Revenue Code Section 415(b)(1)(A) for such year the defined contribution dollar limitation provided in Internal Revenue Code section 415(c)(1)(A), or such successor provision of the Internal Revenue Code, as adjusted for cost of living adjustments pursuant to Internal Revenue Code section 415(d); or~~

(b) ~~twenty five (25)~~ one hundred (100) percent of the compensation paid or made available to the member for such year.

Section 11. Effective January 1, 2002, section 201.24(12.6) is amended to read as follows:

The defined benefit dollar limitation shall equal One Hundred Sixty Thousand Dollars (\$160,000.00) ~~is ninety thousand dollars (\$90,000.00)~~. Effective January 1, 1988 and each January 1 thereafter, the ~~ninety thousand~~ dollar limitation shall be adjusted by multiplying such limit by the cost of living adjustment factor prescribed by the Secretary of the Treasury under Internal Revenue Code section 415(d). The new dollar limitation shall apply to limitation years ending within the calendar year of the date of adjustment.

Section 12. Effective January 1, 2001, section 201.24(12.8) is hereby amended to read as follows:

Compensation, for the purposes of this section, means "member's compensation," as defined in Internal Revenue Code section 415(c)(3) and the regulations thereunder, including elective contributions made by the County on behalf of the member that are not includable in income under Internal Revenue Code section 125, 132(f)(4), 401(h)(2), 402(e)(3), 402(h) or 403(b).

Section 13. Effective January 1, 2008, section 201.24(12.8) is hereby amended to read as follows:

Compensation, for the purposes of this section, means "member's compensation," as defined in Internal Revenue Code section 415(c)(3) and paid prior to the member's severance from employment and the regulations thereunder, including elective contributions made by the County on behalf of the member that are not includable in income under Internal Revenue Code section 125, 132(f)(4), 401(h)(2), 402(e)(3), 402(h) or 403(b).

Section 14. Effective January 1, 2002, section 201.24(13.3) is amended to read as follows:

An eligible retirement plan is an individual retirement account described in Internal Revenue Code section 408(a), an individual retirement annuity described in Internal Revenue Code section 408(b), an individual retirement annuity described in Internal Revenue Code section 403(a), ~~or a~~ qualified trust described in Internal Revenue Code section 401(a) that accepts the distributee's eligible rollover distribution, an eligible deferred compensation plan described in Internal Revenue Code section 457(b) which is maintained by an eligible employer described in Internal Revenue Code section 457(e)(1)(A), or an annuity contract described in Internal Revenue Code section 403(b). ~~However, in the case of an eligible rollover distribution to a distributee's surviving spouse, an eligible~~

1 ~~retirement plan is an individual retirement account or individual retirement~~
2 ~~account or an individual retirement annuity.~~

3
4 **Section 15.** Effective January 1, 2010, the following shall be added to the end of
5 section 201.24(13.3):

6
7 Effective for eligible rollover distributions made on or after January 1, 2008, an
8 eligible retirement plan shall also mean a Roth individual retirement account
9 described in Internal Revenue Code section 408A provided that eligible rollover
10 distributions made on or after January 1, 2008 are subject to the adjusted gross
11 income limits of Internal Revenue Code section 408A(c)(3)(B), as applicable,
12 and the distribution rules of Internal Revenue Code section 408A(d)((3). For a
13 distributee who is a nonspouse designated beneficiary, the direct rollover may
14 be made only to an individual retirement account or annuity described in Internal
15 Revenue Code section 408(a) or 408(b) that is established on behalf of the
16 designated beneficiary for the purpose of receiving the distribution as an
17 inherited individual retirement account or annuity pursuant to the provisions of
18 Internal Revenue Code section 408(d)(3)(C).

19
20 **Section 16.** Effective January 1, 2010, section 201.24(13.4) of the Milwaukee County
21 Code of General Ordinances is amended to read as follows:

22
23 A distributee includes a member or former member. In addition, the member's or
24 former member's surviving spouse and the member's or former member's spouse
25 or former spouse who is the alternate payee under a qualified domestic relations
26 order, as defined in Internal Revenue Code section 414(p), are distributees with
27 regard to the interest of the spouse or former spouse. A distributee also includes
28 a member or former member's nonspouse beneficiary.

29
30 **Section 17.** The provisions of this ordinance shall be effective as set forth
31 above, but in any event no later than upon passage and publication.

MILWAUKEE COUNTY FISCAL NOTE FORM

DATE: March 14, 2014

Original Fiscal Note ☒

Substitute Fiscal Note ☐

SUBJECT: A resolution/ordinance amending various pension ordinances for tax compliance.

FISCAL EFFECT:

- ☒ No Direct County Fiscal Impact
- ☐ Existing Staff Time Required
- ☐ Increase Operating Expenditures
(If checked, check one of two boxes below)
- ☐ Absorbed Within Agency's Budget
- ☐ Not Absorbed Within Agency's Budget
- ☐ Decrease Operating Expenditures
- ☐ Increase Operating Revenues
- ☐ Decrease Operating Revenues
- ☐ Increase Capital Expenditures
- ☐ Decrease Capital Expenditures
- ☐ Increase Capital Revenues
- ☐ Decrease Capital Revenues
- ☐ Use of contingent funds

Indicate below the dollar change from budget for any submission that is projected to result in increased/decreased expenditures or revenues in the current year.

	Expenditure or Revenue Category	Current Year	Subsequent Year
Operating Budget	Expenditure	0	0
	Revenue	0	0
	Net Cost	0	0
Capital Improvement Budget	Expenditure	0	0
	Revenue	0	0
	Net Cost	0	0

DESCRIPTION OF FISCAL EFFECT

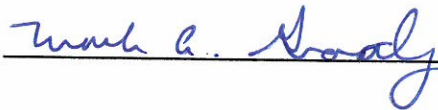
In the space below, you must provide the following information. Attach additional pages if necessary.

- A. Briefly describe the nature of the action that is being requested or proposed, and the new or changed conditions that would occur if the request or proposal were adopted.
- B. State the direct costs, savings or anticipated revenues associated with the requested or proposed action in the current budget year and how those were calculated.¹ If annualized or subsequent year fiscal impacts are substantially different from current year impacts, then those shall be stated as well. In addition, cite any one-time costs associated with the action, the source of any new or additional revenues (e.g. State, Federal, user fee or private donation), the use of contingent funds, and/or the use of budgeted appropriations due to surpluses or change in purpose required to fund the requested action.
- C. Discuss the budgetary impacts associated with the proposed action in the current year. A statement that sufficient funds are budgeted should be justified with information regarding the amount of budgeted appropriations in the relevant account and whether that amount is sufficient to offset the cost of the requested action. If relevant, discussion of budgetary impacts in subsequent years also shall be discussed. Subsequent year fiscal impacts shall be noted for the entire period in which the requested or proposed action would be implemented when it is reasonable to do so (i.e. a five-year lease agreement shall specify the costs/savings for each of the five years in question). Otherwise, impacts associated with the existing and subsequent budget years should be cited.
- D. Describe any assumptions or interpretations that were utilized to provide the information on this form.

This resolution/ordinance amends various sections of the pension ordinance in order to maintain compliance with federal tax laws. As noted in the Pension Board motion, the ERS Manager states that no anticipated administrative costs will be incurred. The actuary's report dated January 31, 2014 is in the file and states that no material costs will be incurred by adoption of the ordinance because ERS already complies with the tax provisions in its operations.

Department/Prepared By Mark A. Grady, Deputy Corporation Counsel

Authorized Signature



Did DAS-Fiscal Staff Review? ☐ Yes ☒ No

Did CBDP Review?² ☐ Yes ☐ No ☒ Not Required

¹ If it is assumed that there is no fiscal impact associated with the requested action, then an explanatory statement that justifies that conclusion shall be provided. If precise impacts cannot be calculated, then an estimate or range should be provided.

² Community Business Development Partners' review is required on all professional service and public work construction contracts.

Milwaukee County Board of Supervisors

ERS Ordinance Amendments Required by the Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA"), Heroes Earnings Assistance and Relief Tax Act of 2008 ("HEART") and the Pension Protection Act of 2006 ("PPA")

Bullet Point Summary

The Employees' Retirement System of the County of Milwaukee ("ERS") is a qualified plan under the Internal Revenue Code ("IRS Code") and must comply with IRS Code requirements applicable to government plans. Periodically, ERS is required to seek a determination letter from the Internal Revenue Service ("IRS") confirming ERS's compliance with Code requirements. Certain ERS Ordinance amendments are necessary to comply with required legislative and regulatory changes. The proposed amendments include requirements from federal legislation adopted in EGTRRA, HEART and PPA.

- **Ordinance Section 201.24(2.7) - EGTRRA**
 - Applicable IRS Code Section Requirement. This change is required to comply with IRS Code section 401(a)(17) requirements.
 - Purpose. The definition of "earnable compensation" within the Ordinances includes the annual compensation limit imposed by IRS Code section 401(a)(17). Code section 401(a)(17) imposes a limit on the amount of annual compensation that can be used to calculate a participant's retirement benefit. The proposed amendment adjusts the limit in accordance with IRS Code section 401(a)(17). This amendment is necessary to fulfill requirements for receipt of a favorable determination letter and correction under the IRS's Voluntary Correction Program ("VCP").
 - Previous Compliance. ERS has operationally complied with this requirement.
 - Effective Date. January 1, 2002.
- **Ordinance Section 201.24(2.10) - HEART**
 - Applicable IRS Code Section Requirement. This change is required to comply with IRS Code section 414(u) requirements.
 - Purpose. The HEART Act made certain changes to how qualified retirement plans treat military service, providing that any additional

benefits that may be provided by a plan due to the death of a participant, other than additional benefit accruals, must be provided to the beneficiaries of a participant who dies in qualified military service as if the participant were employed on the date of death.

The HEART Act also required that differential wage payments provided to participants during qualified military service be treated as compensation to an active employee, even though the employee may be considered terminated for purposes of taking a distribution. Differential wage payments are payments provided by an employer to an employee on active military duty to make up some or all of the wages the employee would have received if he or she were working for the employer.

- Previous Compliance. ERS has operationally complied with these requirements.
- Effective Date. January 1, 2007.
- **Ordinance Section 201.24(4.6) - EGTRRA**
 - Applicable IRS Code Section Requirement. This change is required to comply with IRS Code section 401(a)(9) requirements.
 - Purpose. IRS Code section 401(a)(9) requires plans to begin making required minimum distributions of a participant's benefit starting April 1 of the calendar year following the calendar year in which the employee attains age 70½ or terminates employment, if later. The proposed revisions define the required beginning date and comply with other technical requirements of IRS Code section 401(a)(9) and the regulations. This amendment is necessary to fulfill requirements for receipt of a favorable determination letter and correction under the VCP.
 - Previous Compliance. ERS has operationally complied with these requirements.
 - Effective Date. January 1, 2003.
- **Ordinance Section 201.24(4.7) - EGTRRA**
 - Applicable IRS Code Section Requirement. This change is required to comply with IRS Code section 401(a)(9) requirements.

- Purpose. IRS Code section 401(a)(9) specifies certain requirements for making distributions after a member dies. The proposed amendments reflect required language under the IRS Code section 401(a)(9) regulations relating to required distributions upon a member's death. These amendments are necessary to fulfill requirements for receipt of a favorable determination letter and correction under the VCP.
- Previous Compliance. ERS has operationally complied with these requirements.
- Effective Date. January 1, 2003.
- **Ordinance Section 201.24(4.8)(4) - EGTRRA**
 - Applicable IRS Code Section Requirement. This change is necessary to accurately reflect the adoption of final IRS Code section 401(a)(9) regulations.
 - Purpose. The regulations under IRS Code section 401(a)(9) are now final. The proposed amendments remove from Ordinance section 201.24(4.8)(4) an outdated reference to the proposed regulations under IRS Code section 401(a)(9).
 - Previous Compliance. This change has no operational effect on ERS.
 - Effective Date. January 1, 2003.
- **Ordinance Section 201.24(12.1)(3) - EGTRRA**
 - Applicable Code Section Requirement. This change is required to comply with IRS Code section 415 requirements.
 - Purpose. To satisfy tax qualification requirements, retirement plans must comply with IRS Code section 415, which limits the amount of the benefit that an individual can receive from a retirement plan. The requirements related to IRS Code section 415 are very technical in nature and relate to determining whether an individual's benefit is lower than applicable limits. The proposed amendments incorporate required language under IRS Code section 415 describing how a small pension benefit that a member receives can be deemed to automatically satisfy the IRS Code section 415 benefit limit. This amendment is necessary to fulfill requirements for receipt of a favorable determination letter and correction under the VCP.

- Previous Compliance. ERS has operationally complied with these requirements.
- Effective Date. January 1, 2008.
- **Ordinance Section 201.24(12.2)(1) - EGTRRA**
 - Applicable IRS Code Section Requirement. This change is required to comply with Code section 415 requirements.
 - Purpose. These proposed revisions modify the process for adjusting the form of benefit for purposes of determining whether a benefit complies with the IRS Code section 415 limit. The specific changes are technical in nature and are required by IRS Code section 415 and the accompanying regulations. This amendment is necessary to fulfill requirements for receipt of a favorable determination letter and correction under the VCP.
 - Previous Compliance. ERS has operationally complied with these requirements.
 - Effective Date. January 1, 2008.
- **Ordinance Section 201.24(12.3)(2) - EGTRRA**
 - Applicable IRS Code Section Requirement. This change is required to comply with IRS Code section 415 requirements.
 - Purpose. IRS Code section 415 requires that individuals who receive pension benefits before age 62 be subject to a lower maximum benefit. EGTRRA changed the process for adjusting the IRS Code section 415 limit for individuals receiving benefits before age 62. These proposed revisions are technical in nature and incorporate the required IRS Code section 415 factors for calculating the actuarially equivalent benefit for individuals whose benefits begin before age 62. This amendment is necessary to fulfill requirements for receipt of a favorable determination letter and correction under the VCP.
 - Previous Compliance. ERS has operationally complied with these requirements.
 - Effective Date. January 1, 2002.

- **Ordinance Section 201.24(12.3)(3) - EGTRRA**
 - Applicable Code Section Requirement. This change is required to comply with IRS Code section 415 requirements.
 - Purpose. As noted above, IRS Code section 415 requires that individuals who receive pension benefits before age 62 be subject to a lower maximum pension benefit. EGTRRA removed certain limitations applicable to limiting an individual's benefit that commences before age 62. The deleted requirements are technical in nature. This amendment is necessary to fulfill requirements for receipt of a favorable determination letter and correction under the VCP.
 - Previous Compliance. ERS has operationally complied with these requirements.
 - Effective Date. January 1, 2002.
- **Ordinance Section 201.24(12.4)(1) - EGTRRA**
 - Applicable Code Section Requirement. This change is required to comply with IRS Code section 415 requirements.
 - Purpose. IRS Code section 415(c) limits the annual addition that an individual can make to a defined contribution plan (or, in the case of ERS, to the member's membership account or savings account including purchases of service credit). The proposed change updates the limit for annual additions that a member can contribute to his or her savings account and membership account. This amendment is necessary to fulfill requirements for receipt of a favorable determination letter and correction under the VCP.
 - Previous Compliance.

These amendments will correct the errors reported in the VCP related to members whose purchase of service credit exceeded 25% of their annual compensation.
 - Effective Date. January 1, 2002.
- **Ordinance Section 201.24(12.6) - EGTRRA**
 - Applicable IRS Code Section Requirement. This change is required to comply with IRS Code section 415 requirements.

- Purpose. As noted above, IRS Code section 415(b) limits the annual benefit payable from a defined benefit pension plan, such as ERS, to an individual. The proposed change updates the limit for annual benefit payments consistent with IRS Code section 415 requirements. This amendment is necessary to fulfill requirements for receipt of a favorable determination letter and correction under the VCP.
- Previous Compliance. Generally, ERS has operationally complied with Code section 415(b) and accompanying regulations.
- Effective Date. January 1, 2002.
- **Ordinance Section 201.24(12.8) - EGTRRA**
 - Applicable IRS Code Section Requirement. This change is required to comply with IRS Code section 415 requirements.
 - Purpose. IRS Code section 415 defines what should be included in the definition of "compensation" for purposes of complying with Code section 415(c). The proposed change updates the definition of compensation in compliance with IRS Code section 415 requirements. This amendment is necessary to fulfill requirements for receipt of a favorable determination letter and correction under the VCP.
 - Previous Compliance. ERS has operationally complied with these requirements.
 - Effective Date. January 1, 2001.
- **Ordinance Section 201.24(12.8) - EGTRRA**
 - Applicable IRS Code Section Requirement. This change is required to comply with IRS Code section 415 requirements.
 - Purpose. As noted above, IRS Code section 415 defines what should be included in the definition of "compensation" for purposes of complying with IRS Code section 415(c). Later effective IRS Code section 415 changes require additional updates to Ordinance section 201.24(12.8) with regard to the definition of "compensation." This amendment is necessary to fulfill requirements for receipt of a favorable determination letter and correction under the VCP.

- Previous Compliance. ERS has operationally complied with these requirements.
- Effective Date. January 1, 2008.
- **Ordinance Section 201.24(13.3) - EGTRRA**
 - Applicable IRS Code Section Requirement. This change is required to comply with IRS Code section 401 requirements.
 - Purpose. Certain distributions from qualified plans can be rolled over to an "eligible retirement plan" and receive favorable tax treatment by the IRS. EGTRRA expanded the types of plans that qualify as "eligible retirement plans." The proposed amendment updates the list of plans that qualify as an "eligible retirement plan." This amendment is necessary to fulfill requirements for receipt of a favorable determination letter and correction under the VCP.
 - Previous Compliance. ERS has operationally complied with these requirements.
 - Effective Date. January 1, 2002.
- **Ordinance Section 201.24(13.3) and (13.4) - PPA**
 - Applicable IRS Code Section Requirement. This change is required to comply with IRS Code section 401 requirements.
 - Purpose. As noted above, certain distributions from qualified plans can be rolled over to an "eligible retirement plan" and receive favorable tax treatment by the IRS. The PPA expanded the definition of an "eligible retirement plan" that could receive a rollover distribution from plans such as ERS to include Roth IRAs. In addition, plans must allow nonspouse beneficiaries to roll over benefit payments. This change is required to comply with IRS Code requirements and fulfill requirements necessary for receipt of a favorable determination letter.
 - Previous Compliance. ERS has operationally complied with these requirements.
 - Effective Date. January 1, 2010.



EMPLOYEES' RETIREMENT SYSTEM (ERS)

Milwaukee County

Pension Board

John M. Maier, J.D.
Chairperson

Dr. Brian Daugherty
Vice Chairperson

Laurie Braun
Aimee Funck
Norb Gedemer
Mickey Maier
Marilyn Mayr
Dean Muller
Dr. Sarah W. Peck
Patricia VanKampen
Vera Westphal

Marian Ninneman
ERS Manager

SECRETARY'S CERTIFICATE

The Pension Board of the Employees' Retirement System of the County of Milwaukee ("Pension Board") adopted the following resolution at its regular monthly meeting held on January 15, 2014:

The Pension Board requests that the County Board adopt the proposed Ordinance amendments to sections 201.24 (2.7), (2.10), (4.6), (4.7), (4.8), (12.1), (12.2), (12.3), (12.4), (12.6), (12.8), (13.3) and (13.4) of the Milwaukee County Code of General Ordinances amending the Employees' Retirement System of the County of Milwaukee ("ERS") to comply with the Internal Revenue Code, as amended by the Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA"), Heroes Earnings Assistance and Relief Tax Act of 2008 ("HEART") and the Pension Protection Act of 2006 ("PPA"). The Pension Board waives its 30 day comment period provided under section 201.24(8.17) of the Milwaukee County Code of General Ordinances. Because ERS already incorporated compliance with these federal laws into its operations, the ERS Manager estimates that adoption of the proposed Ordinance amendments would not result in additional administrative or programming cost to the System.

Dated: January 15, 2014.

Certified by:


Steven D. Huff, Secretary

Pension Board of the Employees'
Retirement System of the County
of Milwaukee

January 31, 2014

Michael Mayo Sr.
Chairman
Pension Study Commission
901 N. 9th St.
Milwaukee, WI 53233

RE: Actuary's Review of Proposed Ordinance Amendments to the Employees' Retirement System - County Board

Dear Chairman Mayo:

As part of the process for adopting amendments to County ordinances relating to the Employees' Retirement System ("ERS"), we have reviewed the proposed changes and present this letter detailing our findings. A summary of the proposed ERS amendments follows, as well as our comments on the cost impact to the plan. It is worthwhile to note that the ERS staff currently administers the ERS in compliance with these amendments, which means that these amendments will not change the ongoing cost of the ERS. Finally, many of these amendments apply to very few members. If these amendments had been analyzed before being put into operation, we likely would have found the cost impact to be immaterial.

ERS Proposed Ordinance Amendments

- **Section 1** of the ERS Resolution amends section 201.24(2.7) to incorporate the updated Internal Revenue Code (Code) section 401(a)(17) annual compensation limit that a plan may consider when calculating an individual's benefit.

Buck's comments: The amendment merely deletes some outdated language. ERS staff has confirmed that the operation of the plan already reflects annual updates to Code section 401(a)(17). Therefore, this amendment will have no impact on the cost of the plan.

- **Section 2** of the ERS Resolution amends section 201.24(2.10) by adding provisions required by the Heroes Earnings Assistance and Relief Tax Act of 2008 (HEART Act) to the end.

Buck's comments: It is our understanding that the ERS already operates in compliance with the HEART Act. These amendments to the ERS clarify that ERS operates in compliance with the revised Code and as a result have no cost effect on the plan.

- **Section 3** of the ERS Resolution amends section 201.24(4.6) by clarifying that distributions are made in accordance with Code section 401(a)(9).

Buck's comments: It is our understanding that the ERS already operates in compliance with Code section 401(a)(9). These amendments to the ERS clarify that ERS operates in compliance with the revised Code and as a result have no cost effect on the plan.

- **Section 4** of the ERS Resolution amends section 201.24(4.7) to comply with Code section 401(a)(9) requirements for minimum distributions when a member dies before the date distributions begin.

Buck's comments: It is our understanding that the ERS already operates in compliance with these minimum distribution requirements. These amendments to the ERS clarify that ERS operates in compliance with the revised Code and as a result have no cost effect on the plan.

- **Section 5** of the ERS Resolution amends section 201.24(4.8)(4) to remove a reference to proposed regulations under Code section 401(a)(9).

Buck Comments: The amendment merely deletes some outdated language. ERS staff have confirmed that the operation of the plan already reflects annual updates to Code section 401(a)(9). Therefore, this amendment will have no impact on the cost of the plan.

- **Section 6** of the ERS Resolution restates section 201.24(12.1)(3) to comply with Code section 415.

Buck's Comments: It is our understanding that the ERS already operates in compliance with Code section 415. These amendments to the ERS clarify that ERS operates in compliance with the revised Code and as a result have no cost effect on the plan.

- **Section 7** of the ERS Resolution amends section 201.24(12.2)(1) to comply with Code section 415.

Buck Comments: It is our understanding that the ERS already operates in compliance with Code section 415. These amendments to the ERS clarify that ERS operates in compliance with the revised Code and as a result have no cost effect on the plan.

- **Section 8** of the ERS Resolution amends section 201.24(12.3)(2) to comply with Code section 415.

Buck Comments: It is our understanding that the ERS already operates in compliance with Code section 415. These amendments to the ERS clarify that ERS operates in compliance with the revised Code and as a result have no cost effect on the plan.

- **Section 9** of the ERS Resolution amends section 201.24(12.3)(2) to (a) eliminate the \$75,000 "floor" on Code section 415 benefit limits at age 55; and (b) eliminate the pre-age 55 "floor" that was equal to the actuarial equivalent of the age 55 floor.

Buck Comments: It is our understanding that the ERS already operates in compliance with these Code section 415 benefit limits. These amendments to the ERS clarify that ERS operates in compliance with the revised Code and as a result have no cost effect on the plan.

- **Section 10** of the ERS Resolution amends section 201.24(12.4)(1) to reflect the current provisions of Code section 415(c)(1)(a).

Buck Comments: It is our understanding that the ERS already operates in compliance with Code section 415. These amendments to the ERS clarify that ERS operates in compliance with the revised Code and as a result have no cost effect on the plan.

- **Section 11** of the ERS Resolution amends section 201.24(12.6) to reference Code section 415.

Buck Comments: It is our understanding that the ERS already operates in compliance with Code section 415. These amendments to the ERS clarify that ERS operates in compliance with the revised Code and as a result have no cost effect on the plan.

- **Section 12** of the ERS Resolution amends section 201.24(12.8) to reflect that member compensation is as defined under Code section 415(c)(3).

Buck's comments: It is our understanding that the ERS already operates in compliance with these compensation requirements. This change is required to comply with the Code and will have no impact on the cost of the plan.

- **Section 13** of the ERS Resolution amends section 201.24(12.8) to clarify that compensation is compensation that is paid “prior to the member’s severance from employment”.

Buck Comments: It is our understanding that the ERS already operates in compliance with these compensation requirements. These amendments to the ERS clarify that ERS operates in compliance with the revised Code and as a result have no cost effect on the plan.

- **Section 14** of the ERS Resolution amends section 201.24(13.3) to allow for eligible rollover distributions from 457(b) or 403(b) plans.

Buck Comments: It is our understanding that the ERS already operates in compliance with these rollover requirements. These amendments to the ERS clarify that ERS operates in compliance with the revised Code and as a result have no cost effect on the plan.

- **Section 15** of the ERS Resolution adds language to the end of section 201.24(13.3) which allows for rollover distributions to Roth IRAs.

Buck Comments: It is our understanding that the ERS already operates in compliance with these rollover requirements. These amendments to the ERS clarify that ERS operates in compliance with the revised Code and as a result have no cost effect on the plan.

- **Section 16** of the ERS Resolution amends section 201.24(13.4) to permit a member or former member’s nonspouse beneficiary to be a distributee.

Buck Comments: It is our understanding that the ERS already operates in compliance with these requirements. These amendments to the ERS clarify that ERS operates in compliance with the revised Code and as a result have no cost effect on the plan.

Basis for the Analysis

We have based this analysis on the data and methods used for the January 1, 2013 actuarial valuation with the actuarial assumptions adopted for 2013 by the ERS Pension Board as a result of the recommendations contained in Buck Consultants 5-year experience study. We have not updated the assumptions used for this analysis due to the low frequency of the benefits being triggered.

The calculations are based upon assumptions regarding future events, which may or may not materialize. They are also based upon present and proposed plan provisions that are outlined in the report. If you have reason to believe that the assumptions that were used are unreasonable, that the plan provisions are incorrectly described, that important plan provisions relevant to this proposal are not described, or that conditions have changed since the calculations were made, you should contact the authors of this report prior to relying on information in the report.

The undersigned is a Member of the American Academy of Actuaries and meets the Academy's Qualification Standards to issue this Statement of Actuarial Opinion.

Please call if you have any questions.

Sincerely,



Larry Langer, FCA, ASA, EA, MAAA
Principal, Consulting Actuary

LL:pl

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